

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)	Conf. No.: 8996
	)	
Wille et al.	)	
	)	
Application No.: 10/593,453	)	Group Art Unit: 3663
	)	
Filed: September 19, 2006	)	Examiner: ALGAHAIM
	)	
For: Motor Vehicle Control System	)	

Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

REPLACEMENT APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

This replacement appeal brief is filed in response to the Notice of Non-Compliant Appeal Brief mailed November 18, 2009, requiring applicants to insert headings in the argument section of the brief.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account 14.1437. Please credit any excess fees to such account.

REAL PARTY IN INTEREST:

The real party in interest is Audi AG, of Neckarsulm, Germany.

RELATED APPEALS AND INTERFERENCES:

To the best of the undersigned's knowledge, there are no related interferences or judicial proceedings.

STATUS OF CLAIMS:

Claims 1 – 16 are pending in the application. No claims are canceled. No claims are withdrawn. No claims are allowed or confirmed. Claims 1 – 16 are rejected. No claim objections are pending. Claims 1 – 16 are being appealed.

STATUS OF AMENDMENT:

The Advisory Action mailed September 10, 2009, indicates the amendments to the claims and specification filed subsequent to the final rejection were entered.

SUMMARY OF CLAIMED SUBJECT MATTER:

Independent claim 1 relates to a control system for a motor vehicle with an output control for putting out an information item concerning the operation of the motor vehicle and with a functional control, separated in terms of space from the output control for the generation or supply of information concerning the operation of the motor vehicle, wherein the output control comprises an information memory for the storage of information concerning the operation of the motor vehicle, whereby the information concerning the operation of the motor vehicle is accessible from the information memory of the output control. Independent claim 1 finds support throughout the specification, including in the paragraph spanning pages 2 and 3, and Figures 1 – 3.

Independent claim 11 relates to a process for the control of a motor vehicle with an output control operable for putting out information concerning the operation of the motor vehicle and provided with a functional control separated in terms of space from the output control for the supply of the information concerning the operation of the motor vehicle, wherein the output control includes an information memory for storage of information concerning the operation of the motor vehicle, the process including means for reading out of the information memory the information concerning operation of the motor vehicle. Independent claim 11 finds support throughout the specification, including in the paragraph spanning pages 6 and 7, and Figures 4 – 6.

Summary of the subject matter of the dependent claims is omitted as unnecessary.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

Whether the Office action erred in rejecting:

- I. Claims 1, 2, 9, and 11 under 35 U.S.C. §102(b) in view of U.S. 6,275,231 to Obradovich (hereinafter, “Obradovich”); and
- II. Claims 1 – 16 under 35 U.S.C. §102(b) in view of U.S. 2002/0015035 by Inaba et al. (hereinafter, “Inaba”).

ARGUMENT:

Claimed subject matter is “anticipated” only when it was previously known. Anticipation requires a single prior art reference to describe every aspect of the claimed subject matter<sup>1</sup> and to enable a person of ordinary skill in the field of the invention to practice the invention without undue experimentation.<sup>2</sup> It is not enough for the reference to disclose all the claimed elements in isolation. Instead, every element of the claimed subject matter and every limitation of the claimed subject matter must be described in the

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<sup>1</sup> See *Schering Corp. v. Geneva Pharms., Inc.*, 339 F.3d 1373, 1379 (Fed. Cir. 2003); *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1267-69 (Fed. Cir. 1991).

<sup>2</sup> See *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 457 F.3d 1293, 1306-07 (Fed. Cir. 2006); *Elan Pharms., Inc. v. Mayo Found. for Med. Educ. & Research*, 346 F.3d 1051, 1054 (Fed. Cir. 2003).

reference as arranged in the claimed invention.<sup>3</sup> Indeed, “[the] reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.”<sup>4</sup>

Independent claim 1 relates to a control system for a motor vehicle. The control system includes an output control and a functional control. The output control and the functional control are separated from each other in terms of space. The functional control generates or supplies information concerning the operation of the motor vehicle. As explained in the first full paragraph on page 10 of the specification:

Functional control 21 can correspond to the engine control 2, the climate-controlled system 6, the navigation system 7, the music module 8, and/or the phone module 9.

The specification also explains,

The information concerning the operation of the motor vehicle can be transmitted from the functional control 21 to the output control 22, which corresponds to the bus system 10 by means of a bus system 24.

The output control puts out an information item concerning the operation of the motor vehicle.

Output control 22 can correspond to the combination display 3, the touch screen 4, and/or the acoustic output device 5.

Claim 1 also requires the output control to include an information memory for the storage of information concerning the operation of the motor vehicle, whereby the information concerning the operation of the motor vehicle is accessible from the information memory of the output control.

Similarly, independent claim 11 relates to a process for the control of a motor vehicle with an output control, wherein the output control includes an information

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<sup>3</sup> *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)

<sup>4</sup> *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972) (emphasis in original).

memory for storage of information concerning the operation of the motor vehicle, the process including means for reading out of the information memory the information concerning operation of the motor vehicle.

I. Obradovich

The final Office action mailed May 26, 2009, cites column 4, lines 18 – 50 of Obradovich, however, this citation merely describes a control interface 117 including a display 205, driver control keys 211, operating keys 215, accessory keys 219, access keys 232, and indicator devices 227 and 229. By dropping all argumentation regarding Obradovich and focusing only on Inaba, the Advisory action mailed September 10, 2009, seems to acknowledge Obradovich fails to disclose the claimed invention. The rejection should be reversed.

II. Inaba

The final Office action cites paragraph [0035] of Inaba, however, this citation merely describes a warning control unit that compares values from a sensor with a normal value. Only the normal value is stored in ROM 2. Inaba provides no indication that the values obtained from the sensor can or should be stored in ROM 2. Indeed, as would be apparent to a person having ordinary skill in the art that “ROM” refers to read-only memory, whose contents can be accessed and read but cannot be changed. Thus, information concerning the operation of the motor vehicle generated or supplied from a functional control could not be stored in ROM 2. Nor is the information concerning the operation of the motor vehicle accessible from ROM 2.

The Advisory action mailed September 10, 2009, cites paragraph [0037] and Figures 1 – 4 of Inaba. Paragraph [0037] describes a meter control unit. Signals from a car speed sensor, an engine revolution sensor, a fuel remaining sensor, and a water temperature sensor are inputted into the meter control unit. A meter indication signal CON 2 corresponding to an output of the sensors is made. CON 2 is not stored in an information memory. CON 2 is supplied to a pointer type movement drive control

circuit. Character image data DSP 3 corresponding to CON 2 is read out of ROM 6 and supplied to an interface circuit. ROM 6 corresponds to read-only-memory. Information concerning the operation of the motor vehicle generated or supplied from a functional control could not be stored in ROM 6. Nor is the information concerning the operation of the motor vehicle accessible from ROM 6.

The rejection should be reversed.

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Date: November 24, 2009

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael P. Byrne".

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CLAIMS APPENDIX:

1. Control system for a motor vehicle with an output control for putting out an information item concerning the operation of the motor vehicle and with a functional control, separated in terms of space from the output control for the generation or supply of information concerning the operation of the motor vehicle, wherein the output control comprises an information memory for the storage of information concerning the operation of the motor vehicle, whereby the information concerning the operation of the motor vehicle is accessible from the information memory of the output control.

2. Control system according to claim 1, wherein the information concerning the operation of the motor vehicle is accessible from the information memory of the output control upon inquiry to put out the information concerning the operation of the motor vehicle.

3. Control system according to claim 1 further comprising a communication link for transmitting the information concerning the operation of the motor vehicle from a functional control to the output control independent of a request to put out information concerning the operation of the motor vehicle.

4. Control system according to claim 3, wherein the information concerning the operation of the motor vehicle is transmitted from the functional control to the output control responsive to a change concerning the operation of the motor vehicle by the functional control.

5. Control system according to claim 3 wherein the information concerning the operation of the motor vehicle is transmitted from the functional control to the output control after expiration of a selected time.

6. Control system according to claim 5, wherein by means of output control, one can monitor whether, within the selected time, the information concerning the operation of the motor vehicle was transmitted from the functional control to output control.

7. Control system according to claim 5, wherein the information concerning the operation of the motor vehicle out of the information memory cannot be put out by output control when the information concerning the operation of motor vehicle was not

transmitted within one of the selected time and a time lapse from the functional control to output control, whereby the time lapse is longer than the selected time.

8. Control system according to claim 1 wherein the output control includes a display for the optical illustration of the information concerning the operation of the motor vehicle.

9. Control system according to claim 1, wherein the output control comprises an input device for the purpose of putting in a request for putting out and/or for optical illustration of the information concerning the operation of the motor vehicle.

10. Motor vehicle, including a control system according to claim 1.

11. Process for the control of a motor vehicle with an output control operable for putting out information concerning the operation of the motor vehicle and provided with a functional control separated in terms of space from the output control for the supply of the information concerning the operation of the motor vehicle, wherein the output control includes an information memory for storage of information concerning the operation of the motor vehicle, the process including means for reading out of the information memory the information concerning operation of the motor vehicle.

12. Process according to claim 11, wherein the information concerning the operation of the motor vehicle is transmitted by means of a communication link from the functional control to the output control, into the information memory.

13. Process according to claim 11, wherein the information concerning the operation of the motor vehicle is transmitted by means of a communication link independently of a request for putting out the information concerning the operation of the motor vehicle from the functional control to output control into the information memory.

14. Process according to claim 13, wherein the information concerning the operation of the motor vehicle is transmitted from the functional control to the output control in the event of a change of the information concerning the operation of the motor vehicle to the functional control.

15. Process according to claim 13, wherein the information concerning the operation of the motor vehicle is transmitted from the functional control to the output control after expiration of a selected time.



16. Process according to claim 15, including monitoring within the selected time, whether the information concerning the operation of the motor vehicle, was transmitted from the functional control to the output control

EVIDENCE APPENDIX:

None.

RELATED PROCEEDINGS APPENDIX:

None.